December 30, 2019

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, DC 20529-2140


Dear Ms. Deshommes:

On behalf of the American Bar Association (“ABA”), I submit the following comments in response to the notice of proposed rule regarding “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” (November 14, 2019), DHS Docket No. USCIS-2019-0010 (hereinafter “proposed rule”).

The ABA is the largest voluntary association of lawyers and legal professionals in the world. The ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, and works to build public understanding around the world of the importance of the rule of law. The ABA’s Commission on Immigration provides continuing education to the legal community, judges, and the public and develops and assists in the operation of pro bono legal representation programs.

The ABA has adopted policy urging that:
   a) fees for immigration and naturalization benefits be set at a level that would not result in the denial of benefits to those who demonstrate an inability to pay;
   b) clearly defined fee waiver policies and procedures are in place to ensure that waivers are available;
   c) fees are not charged for applications for humanitarian forms of immigration relief and associated benefits; and
   d) applicants for immigration benefits do not bear the costs of activities not directly related to application processing that benefit the general public, such as national security and anti-fraud efforts.

This proposed rule is not consistent with these recommendations and it will inevitably result in the denial of benefits to individuals who are otherwise eligible based solely on their inability to pay.
We understand that U.S. Citizenship and Immigration Services (“USCIS”) needs appropriate resources to ensure timely and efficient processing of applications and that the fee schedule is periodically adjusted to meet these needs. However, the proposed rule would increase fees dramatically and disproportionately in certain critical categories. For example, the filing fee for naturalization would increase by 83% for some applicants - from $640 to $1,170. The proposed rule would also eliminate the availability of long standing filing fee waivers for naturalization and most other categories, except for those required by statute. This combination of increasing fees and eliminating fee waivers may together effectively bar many low-income individuals and families from pursuing naturalization. Imposing any kind of financial means test on citizenship is inconsistent with our values as a nation of immigrants and contrary to our interests in ensuring that those who permanently reside in our country are able to become fully participating members of our democracy.

The proposed rule also would, for the first time, impose a filing fee for affirmative asylum applications. This fee would not be eligible for a waiver. The ABA strongly opposes the imposition of this fee. While the proposed amount of $50 may seem nominal, asylum seekers are often forced to flee their home countries with little to no funds or material possessions. Even this relatively small amount, particularly in the case of families, could present an insurmountable barrier to seeking asylum. The proposed rule compounds this problem by implementing a new $490 fee for an asylum seeker to file an initial employment authorization application. This fee also would be imposed on those who have applied for defensive asylum before the Executive Office for Immigration Review. For individuals with limited resources, the inability to work while their asylum claims are pending creates an additional financial barrier to full and fair access to the asylum system.

The prospect of asylum seekers being returned to face persecution, or worse, in the countries they fled simply because they didn’t have the financial means to pursue protection in the U.S. is antithetical to our nation’s historical role in providing a safe haven for those seeking refuge from persecution. Congress clearly agrees. The Explanatory Report to the Fiscal Year 2020 Department of Homeland Security Appropriations Act notes that “USCIS is encouraged to refrain from imposing fees on any individual filing a humanitarian petition, including, but not limited to, individuals requesting asylum; refugee admission; protection under the Violence Against Women Act; Special Immigrant Juvenile status; a T or U visa; or requests adjustment of status or petitions for another benefit after receiving humanitarian protection.”

In addition, imposing a filing fee for asylum applications would arguably put the U.S. in violation of its legal obligations as a party to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees. Currently, of the more than 140 countries that are parties to the 1951 Convention, only three impose a fee for an initial application for asylum, and even those three provide exemptions in certain circumstances. In the proposed rule, USCIS itself acknowledges that “the asylum fee may arguably be constrained in amount...by the 1951 U.N. Convention

2  https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx.

The proposed rule also would allow USCIS to transfer more than $100 million in applicant fees from the Immigration Examinations Fee Account (“IEFA”) to Immigration and Customs Enforcement (“ICE”). Congress intended that the IEFA be used “for expenses in providing immigration adjudication and naturalization services” and administering the IEFA.\footnote{8 U.S.C. § 1356(n).} Transferring application fee funds to ICE for immigration investigation and enforcement purposes is not authorized by statute and is contrary to congressional intent. The Department of Homeland Security Appropriations Act for Fiscal Year 2020 contained a provision to prevent the use of IEFA fees for ICE investigations. The Explanatory Report notes that “The agreement provides direct funding of $207,600,000 above the request in lieu of the proposed use of Immigration Examinations User Fee revenue to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services operations and the growing backlog in applications for immigration benefits.”\footnote{H.R. 1158 – Division D – Department of Homeland Security Appropriations Act, Fiscal Year 2020, Explanatory Report at 10, https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/HR%201158%20-%20Division%20D%20-%20Homeland%20SOM%20FY20.pdf} USCIS should not attempt in this rule, or otherwise, to divert USCIS application fees to ICE for enforcement or other purposes.

The proposed rule’s new fee structure will place asylum, naturalization and other immigration benefits out of reach of many low-income immigrants and those seeking humanitarian protections. Application fees should not be so excessive as to prevent otherwise eligible individuals from accessing benefits, and USCIS initiatives that benefit the public should be funded through federal appropriations rather than through application fees. For these reasons, we urge you to withdraw the proposed rule.

Thank you for your consideration of our comments.

Sincerely,

Judy Perry Martinez